IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION No. 2648 of 2006

SADASHIV NAMDEO PHALAK ... Petitioners
V/S
KUSUM DINKAR GAJARE .. Respondent

Mr. S. S. Kanetkar for petitioner
Mr. K. D. Gajare for respondent.

CORAM: S. B. MHASE J.
DATE:20/04/2006

P.C.:

1. Order dated 21st January 2006 passed by the Civil Judge, Senior Division, Pune, below exhibit 54 in Regular Civil Suit NO. 295 of 1997 is under challenge in this petition. By the said order issue no. 5 is modified. Issue no. 5 was to the following effect:

   "5. Does the plaintiff prove that the Will dated 31-12-1990 is valid and legal and certificate of Doctor attached to the said Will is also legal and valid ?"

2. From the above issue the last portion i.e. "certificate of Doctor attached to the said Will is also legal and valid" is deleted by the impugned order. In fact that portion has been rightly deleted because the first part of the said issue covers the second part of the said issue also. Since the endorsement of

the Doctor is on the Will itself.

3. The learned counsel invited the attention of this court to para 2(b) of the amended written statement and submitted that according to him the said certificate is a forged one since it is obtained subsequent to the petition. However, if the petitioner – defendant wanted to go by that assertion the burden of proof will be on the defendant / petitioner. For such relief there was no application before the trial court made by any of the parties to the suit. The learned counsel for the petitioner states that he desires to make such an application. If such an application is made the court may consider the same on the basis of the pleadings and the material on record as to whether such an issue is to be framed or not. With the above observations this petition is dismissed.

(S. B. MHASE J.)